

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SCOTT C. SMITH,

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT
OF CORRECTIONS et al.,

Defendants.

CASE NO. C13-5138 RBL-JRC

ORDER GRANTING PLAINTIFF'S
MOTION TO AMEND THE
COMPLAINT

The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States Magistrate Judge J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and Magistrate Judge Rules MJR3 and MJR4.

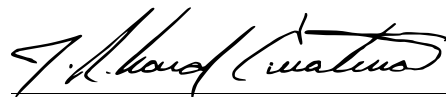
Plaintiff asks the Court for leave to file an amended complaint that names the "John Does" in his original complaint and "clarifies" plaintiff's claims (ECF No. 23). The Court grants the motion because in the Ninth Circuit, pro se plaintiffs should be given leave to amend prior to dismissal "unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment." *Franklin v. Murphy*, 745 F.2d 1221, 1228 n.9 (9th Cir. 1984) (citation and internal quotations omitted); *see also Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995);

1 *Rizzo v. Dawson*, 778 F.2d 527, 529-30 (9th Cir. 1985); cf. *Denton v. Hernandez*, 504 U.S. 25,
2 34 (1992) (suggesting that if the complaint's deficiencies could be remedied by amendment, then
3 it may be abuse of discretion to dismiss complaint without granting leave to amend).

4 In light of this order, defendants shall inform the Court whether or not they wish to have
5 the Court consider the currently pending motion for summary judgment (ECF No. 12), or if
6 defendants wish to withdraw the motion. The Court notes that plaintiff has filed a response to
7 defendants' motion for summary judgment (ECF No. 28).

8 Defendants' shall inform the Court of their decision on or before the July 19, 2013 noting
9 date for consideration of the motion. If plaintiff intends for the Court to attempt service by mail
10 of his amended complaint on the newly named defendants, then plaintiff will need to file and
11 properly note a motion requesting that the Court attempt service of the amended complaint.
12 Plaintiff will also need to provide a service copy of the amended complaint for each newly
13 named defendant.

14 Dated this 3rd day of July, 2013.

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16 J. Richard Creatura
17 United States Magistrate Judge
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